IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

F.A. No. 450/2006

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 23rd November, 2006

Heard Shri P. C. Marpakwar, learned counsel for the appellant and Shri R.A. Khan, learned counsel for the respondent-applicant.

2. The appellant has filed this appeal purporting to be under section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as “the Act” against Judgment and order dated 5.5.2006 passed by Commissioner under the Workmen's Compensation Act in W.C.A. Case No. 58/2003 granting compensation of Rs. 1,56,955/- along with interest thereon at the rate of 7.5% p.a. from 25.8.2003 till realisation and further granting penalty.

3. The applicant filed application before the Commissioner alleging that he was working in the saw mill viz. Panchasheel Saw Mill at Kalamb of the respondent for about 4-5 years. He alleged that when he was working in

the saw mill on ara machine on 25.7.2003 his hand came in contact with the blade of the machine and he suffered disablement and his hand had to be amputated. He was admitted in the General Hospital at Yavatmal by the son of the respondent. The applicant claimed compensation on the ground that the applicant had suffered permanent disablement on account of the accident which occurred in the course of and out of employment. The claim was contested by the respondent. According to the respondent the applicant was not working with him and as such the question of applicant meeting with the accident did not arise. Before the Commissioner, the applicant examined himself and two witnesses, one of them being the doctor and another a co-worker viz. Narayan Chunarkar. The non-applicant examined himself and one Narayan Gadhwe. The Commissioner after appreciating the evidence led by the parties held that the applicant had proved that he was working with the respondent as a labourer earning wages of Rs. 100/- per day. The Commissioner negatived the defence of the respondent and considering the fact that the applicant had suffered permanent disablement to the extent of 46% awarded compensation as mentioned above. For the purpose of arriving at the finding that the applicant was employed with the respondent the Commissioner relied upon the evidence of the applicant and his witness Narayan Chunarkar who deposed that at the relevant time the

applicant was in the employment of the non-applicant. The Commissioner also relied upon the statement made by the respondent in his examination that he was maintaining the record of the persons working with him in the saw mill for about 30 years and since the respondent did not produce the records, the Commissioner accepted the evidence of the applicant and disbelieved the version of the witnesses examined by the respondent inter alia on the ground that the respondent had not produced the records which would have proved the defence taken by the respondent.

4. Mr. Marpakwar, learned counsel for the appellant submitted that the Commissioner ought to have accepted the evidence led by the respondent and ought to have disbelieved the version given by the witnesses examined by the applicant. He further submitted that the evidence led by both the parties was in the nature of oral evidence and that the applicant has not discharged the burden of proving that he was employed with the respondent. He, therefore, submitted that the finding given by the Commissioner that the applicant was employed with the respondent in his mill is perverse and, therefore, interference is called for in the appeal.

5. Per contra, Mr. Khan, the learned counsel appearing for the respondent submitted that the Commissioner was justified in recording the finding that

the applicant was employed with the respondent in his saw mill. He further urged that the Commissioner rightly believed the witnesses examined on behalf of the applicant in preference to the witnesses examined by the respondent to hold that the applicant was an employee of the respondent. He further submitted that the Commissioner was justified in drawing adverse inference against the appellant for not producing records showing the persons employed by him which according to the respondent himself was maintained for the period of about 30 years. The learned counsel further invited my attention to the statement of the applicant that soon after the accident he was taken to the hospital by the son of the respondent has not been denied by the respondent in the cross-examination of the applicant. He, therefore, submitted that the findings given by the Commissioner are based upon proper appreciation of the evidence led by the parties and, therefore, no interference is called for in the appeal.

6. Having considered the submissions made by the learned counsel for the parties and having perused the impugned Judgment and order I do not find any infirmity in the finding given by the Commissioner. Firstly, the evidence of the applicant himself that he was employed with the respondent and he met with an accident is corroborated by oral evidence of his witness Narayan

Chunarkar and also by medical evidence which clearly establishes that he suffered permanent disability. Moreover, the admission made by the respondent that he was maintaining the records of the persons employed in the saw mill for a period of about 30 years and that the respondent did not produce the record further leads assurance to the oral testimony of the applicant and his witnesses. I do not find any legal infirmity in the approach of the Commissioner drawing adverse inference against the respondent for not producing records which would have contrarily proved the defence taken by the respondent. One more aspect which is important to be noted is that the statement made by the applicant in his examination-in-chief that after the accident he was taken by the son of the respondent to the hospital has not been denied in his cross-examination. This is an additional factor which gives credence to the version of the applicant that he was employed with the respondent and he met with an accident while working in the saw mill resulting in permanent disablement. Thus, upon appreciation of the evidence, the conclusion drawn by the Commissioner that the applicant has proved his case cannot be faulted. Therefore, in my opinion, the Judgment and order passed by the Commissioner cannot be said to be unsustainable. In any case, no substantial question of law is involved in the present appeal.

7. For the reasons aforesaid, I do not find any merit in the present appeal and, therefore, the appeal is summarily rejected.

C.A. No. 4557/06

In view of the dismissal of the appeal nothing survives in this application. Hence, the application stands dismissed as infructuous.

Judge

patle